

Decision 04-10-006 October 7, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M), a California corporation, and Solano County Farmlands and Open Space Foundation, a California public benefit corporation, for an Order Authorizing the Former to Sell and Convey to the Latter Certain Parcels of Land in Solano County Pursuant to Public Utilities Code Section 851.

Application 04-07-039
(Filed July 27, 2004)

**OPINION APPROVING PACIFIC GAS AND ELECTRIC COMPANY'S AND
SOLANO COUNTY FARMLANDS AND OPEN SPACE FOUNDATION'S
APPLICATION AUTHORIZING THE AMENDMENT OF AN OPTION TO SELL
AND CONVEY LAND TO SOLANO LAND TRUST UNDER SECTION 851**

Summary

This decision grants the unopposed application of Pacific Gas and Electric Company (PG&E) and Solano Land Trust, a California Public Benefit Corporation (Solano)¹ for Commission approval under Public Utility Code Section 851² of an amendment (Third Amendment) to an option agreement previously approved by the Commission, enabling Solano to purchase certain PG&E land parcels in Solano County.

¹ Solano County Farmlands and Open Space Foundation does business as Solano Land Trust.

² All statutory references are to the Public Utilities Code unless otherwise referenced.

Our decision on this matter is expedited based on PG&E's and Solano's representation that the funding for purchase of the PG&E land parcels expires on November 30, 2004.³

Background

In Decision (D.) 01-05-076⁴ the Commission approved, pursuant to Section 851, PG&E's proposed sale and conveyance of certain land parcels⁵ to Solano. D.01-05-076 approved the Purchase and Sale agreement and the Original Option Agreement subject to compliance with environmental regulations, and shareholder obligations regarding any expansion of reserved easements.⁶

PG&E and Solano explain that subsequent to D.01-05-076, Solano purchased the King Ranch parcel and a portion of the Eastern Swett Ranch parcel, and that Solano has not yet purchased the remainder of the Eastern Swett Ranch and Vallejo Swett land parcels. On January 23, 2004, PG&E and Solano executed an Amended Option Agreement, and on January 24, 2004, the option term under the Original Option Agreement expired. On May 19, 2004, PG&E filed a Petition for Modification of D.01-05-076 to approve the Amended Option Agreement and extend the time to comply with D.01-05-076 to November 22, 2006. Also on May 19, 2004, PG&E requested by letter to the Commission's Executive Director an extension to November 22, 2006, for Solano

³ PG&E and Solano state that Solano has secured the funding from the California Department of Fish and Game, via a Wildlife Conservation Board Grant.

⁴ Application (A.) 01-02-005.

⁵ The land parcels are the King Ranch, Eastern Swett Ranch and Vallejo Swett Ranch.

⁶ D.01-05-076, Order, pp.18-19.

to fully exercise the Amended Option Agreement and complete the purchase approved in D.01-05-076. On May 21, 2004, the Commission indicated that PG&E's request to approve the Amended Option Agreement should be resubmitted as a new application.⁷ On June 18, 2004, the Executive Director, pursuant to Rule 48(b) of the Commission's Rules of Practice and Procedure (Rule), granted PG&E's request to extend the land purchase, and compliance with D.01-05-076 to November 22, 2006.⁸

On July 27, 2004, PG&E and Solano jointly filed A.04-07-039 (Application) requesting Commission authorization of the Third Amendment⁹ to the Original Option Agreement to Purchase Real Property (Amended Option Agreement). The Amended Option Agreement¹⁰ includes a 30-month extension of Solano's option term to July 24, 2006, and a revision extending the closing date to 120 days after the option is exercised.¹¹ The Amended Option Agreement also includes revisions regarding: 1) when the option may be exercised; 2) an extension of

⁷ E-mail from the Commission's Administrative Law Judge (ALJ) Division to Peter Van Mieghem, PG&E Law Department.

⁸ Letter from William Ahern, Executive Director, to Peter Van Mieghem, PG&E Law Department.

⁹ PG&E and Solano executed two prior amendments to the Original Option Agreement. The first amendment extended the Environmental Due Diligence Period, and the second amendment added the need for approval of the Bankruptcy Court (a provision no longer applicable). PG&E states that it did not believe that these amendments were sufficiently material to merit Commission review.

¹⁰ *See*, Application, Exhibit A.

¹¹ If Solano exercised its option on the last day of the extension (July 24, 2006) the last closing date would be November 22, 2006.

time for PG&E's reservation of environmental or conservation easements over the purchased property; and 3) a provision relating to a PG&E and Solano service contract regarding mitigation credits related to enhancements or restoration of habitats.

Accompanying the Application is a motion to shorten the procedural schedule, by reducing the protest period, and the dates for draft and final decisions.¹²

No protests to the Application were received.

Discussion

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is adverse to the public interest.¹³ In D.01-05-076 addressing Solano's proposed purchase of the King Ranch, Eastern Swett Ranch and Vallejo Swett Ranch land parcels, we found that: 1) the usefulness of the property to the provision of utility service was minimal; 2) PG&E retained the residual utility functions through reserved easements; and 3) the utility property could be used for other productive services without affecting utility service. Therefore, we concluded that the sale was in the public interest and complied with Section 851.¹⁴ In addition, D.01-05-076 approved PG&E's proposed ratemaking treatment, and considered whether the property sales would result in any adverse environmental consequences under the

¹² An assigned ALJ ruling on August 6, 2004, reduced the protest period to 15 days from the 30-day period otherwise applicable under Rule 44.1.

¹³ See, e.g., Universal Marine Corporation, D.84-04-102, 14 CPUC 2d, 644, 646.

¹⁴ D.01-05-076, pp. 11-12.

California Environmental Quality Act (CEQA). We concluded that this sale does not have the potential for causing a significant effect on the environment, and accordingly the Commission need not perform a CEQA review.¹⁵ The Application presents no information that would alter our CEQA determination in D.01-05-076. Therefore, no further CEQA review is required.

In this instance we are asked to approve an amendment that provides additional time for Solano to complete its purchase of the remaining land parcels, and provides PG&E an optional service contract, funded by PG&E, that would enhance or restore habitat and entitle PG&E to mitigation credits. Our review of the Amended Option Agreement confirms that the Amended Option Agreement maintains the essential elements of the previously approved Original Option Agreement, while providing Solano with additional time to complete its purchase of the remaining land parcels, and therefore, serves the public interest and complies with Section 851.

We have expedited our review and approval of the Application based on PG&E's and Solano's representation that the necessary funding to complete the sale of the land parcels will expire on November 30, 2004, if Commission approval has not been granted.

Conclusion

For all of the foregoing reasons, we grant the application of PG&E pursuant to Section 851.

¹⁵ *Id.*, p. 14.

Final Categorization and Waiver of Review Period

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations as to categorization and need for a hearing made in Resolution ALJ 176-3137 (August 19, 2004). Moreover, since this proceeding is uncontested and we grant the relief requested, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. Pursuant to D.01-05-076, Solano purchased the King Ranch parcel and a portion of the Eastern Swett Ranch parcel. Solano has not yet purchased the remainder of the Eastern Swett Ranch parcel, or the Vallejo Swett Ranch parcel.
2. Solano has secured funding for the remaining land parcels authorized in D.01-05-076. This funding expires on November 30, 2004, if Commission approval has not been granted.
3. The Amended Option Agreement provides for completion of Solano's purchase of land parcels pursuant to the Option Agreement to Purchase Real Property authorized in D.01-05-076.
4. D.01-05-076 concluded that the sale would not have the potential to cause a significant effect on the environment and thus CEQA review was not required.
5. There is no information to alter our CEQA finding in D.01-05-076.
6. The Amended Option Agreement provides a 30-month extension of Solano's option term, an extension of the closing date to 120 days after the option is exercised, and a provision allowing PG&E to establish a service contract to

enhance and restore habitat, funded by PG&E, with mitigation credits accruing to PG&E in lieu of easements for conservation or environmental purposes.

7. An expedited schedule for processing the Application is justified.

Conclusions of Law

1. PG&E's and Solano's Third Amendment is consistent with Section 851, and will serve the public interest.

2. No further CEQA review is required for approval of this application.

3. The decision approving the Third Amendment should be effective today in order to allow Solano to secure necessary funding and complete the purchase of the remainder of the Eastern Swett Ranch and Vallejo Swett Ranch land parcels.

O R D E R

IT IS ORDERED that:

1. PG&E's Application for approval of the Third Amendment to the Option Agreement to Purchase Real Property is granted.

2. This proceeding is closed.

This order is effective today.

Dated October 7, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners